

REMARKS

Claim 29 is added, and therefore claims 12 to 19 and 26 to 29 are now pending and being considered in the present application (since claims 20 to 25 were previously withdrawn in response to a restriction requirement).

In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With respect to paragraph four (4) of the Office Action, claims 12 to 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,438,463 (“Tobaru”) in view of U.S. Patent Application Publication No. 2002/0069006 (“Faye”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 12, as presented, is directed to a method for rollover stabilization of a vehicle in a critical driving situation, including estimating information from a relationship between a steering variable and a roll variable, the information relating to a rollover tendency of the vehicle and being taken into account in a scope of the rollover stabilization -- only in predetermined driving situations. Support for this feature may be found, for example, at page 7, line 26 to page 8, line 2 of the Specification.

The Tobaru reference at column 12, line 64 to column 14, line 55 merely refers to detection of the steering angle δ and a change in the threshold value lines S based on the detected steering angle. In contrast, the estimating of claim 12, as presented, is only implemented in predetermined driving situations (in particular, those more meaningful to the estimation (as in new claim 29, as explained below)). As described in the Specification, for example, at page 7, line 26 to page 8, line 2, under particular circumstances, such as a particular transverse acceleration or steering speed, the estimation is implemented.

The Tobaru reference does not disclose, or even suggest, estimating information from a relationship between a steering variable and a roll variable, the information relating to a rollover tendency of the vehicle and being taken into account in a scope of the rollover stabilization, *in which the estimating is only performed in predetermined driving situations*.

Since the Faye reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference, the combination of the Tobaru and Faye references does not disclose or suggest all of the features of independent claim 12, as presented, so that claim 12 is allowable, as are its dependent claims. Withdrawal of the obviousness rejections is therefore respectfully requested.

With respect to paragraph five (5) of the Office Action, claims 17, 18, and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tobaru reference, as modified by the Faye reference, and further in view of Japanese Patent Application Publication No. JP63116918 (“Takumi”).

Claims 17, 18, and 27 depend from claim 12, and are therefore allowable for essentially the same reasons, since the secondary references do not cure -- and are not asserted to cure -- the critical deficiencies of the primary reference. Withdrawal of the present rejections is therefore respectfully requested.

With respect to paragraph six (6) of the Office Action, claim 19 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tobaru reference, as modified by the Faye and Takumi references, and further in view of U.S. Patent No. 6,498,976 (“Ehlbeck”).

Claim 19 depends from claim 12, and is therefore allowable for essentially the same reasons, since the secondary references do not cure -- and are not asserted to cure -- the critical deficiencies of the primary reference.

Further, claim 19 includes the feature of weighting a rollover indicator by a weighting function indicating a quality of an estimation of the rollover indicator. The cited portion of the Ehlbeck reference, however, merely refers to a rollover score being compared to multi-tiered threshold values, in an evaluation of the rollover risk level. Even if the level of the risk may be considered -- the quality of the calculation is not considered.

In contrast, the weighting function of claim 19 is used to indicate a quality of an estimation of the rollover indicator. This weighting function indicates whether an estimation is reliable -- and not whether the estimation indicates rollover risk. For example, as disclosed in the Specification at page 8, lines 3 to 5, this weighting function may analyze the reliability of the rollover indicator by taking into account the number of learning events that have led to this estimation and/or the period of time during the trip that went into the estimation.

For all of the foregoing reasons, the combination of the Tobaru, Faye, Takumi and Ehlbeck references does not disclose, or even suggest, all of the features of claim 19, so that claim 19 is allowable. Withdrawal of the present rejection is therefore respectfully requested.

With respect to paragraph seven (7) of the Office Action, claims 26 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tobaru reference, as modified by the Faye and Takumi references, and further in view of the Ehlbeck reference.

Claims 26 and 28 depend from claim 12, as presented, and are therefore allowable for essentially the same reasons, since the secondary references do not cure -- and are not asserted to cure -- the critical deficiencies of the primary reference. *Further, claims 26 and 28 contain features essentially the same as claim 19, and are therefore allowable for the same additional reasons as claim 19.* Withdrawal of the present rejections is therefore respectfully requested.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by that Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the

**U.S. Pat. Appl. Ser. No. 10/553,112
Attorney Docket No. 10191/4153
Reply to Office Action of December 9, 2008**

Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

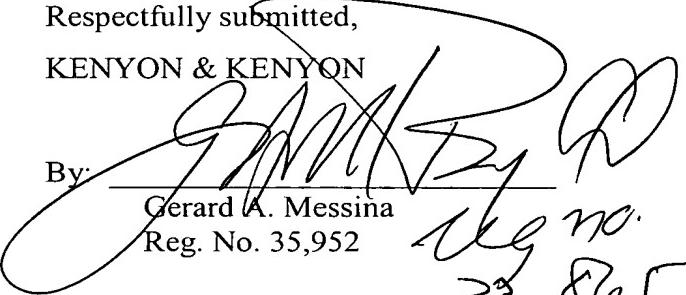
New claim 29 does not add any new matter and is supported by the present application. Claim 29 depends from claim 12, as presented, and is therefore allowable for the same reasons.

Accordingly, claims 12 to 19 and 26 to 29 are allowable.

CONCLUSION

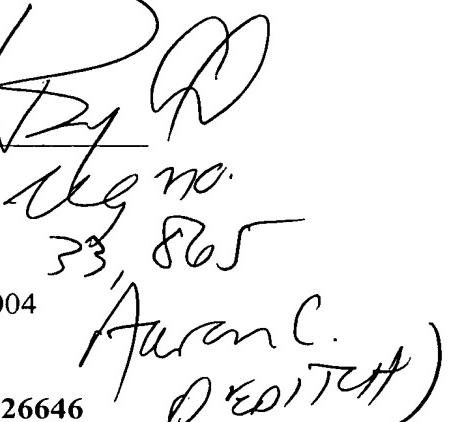
In view of the foregoing, it is respectfully submitted that all of the presently pending and considered claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action of the merits is respectfully requested.

Dated: 3/4/09

Respectfully submitted,
KENYON & KENYON
By: 
Gerard A. Messina
Reg. No. 35,952

One Broadway
New York, NY 10004
(212) 425-7200

CUSTOMER NO. 26646


33,865
Aaron C.
DeSoto)